



Office of Governmental Affairs  
P.O. Box 942720  
Sacramento, CA 94229-2720  
Telecommunications Device for the Deaf - (916) 795-3240  
(916) 795-3689, FAX (916) 795-3270

May 13, 2008

**AGENDA ITEM 3c**

**TO: MEMBERS OF THE BENEFITS AND PROGRAM ADMINISTRATION  
COMMITTEE**

**I. SUBJECT:** AB 2838 (Duvall)—As Amended April 3, 2008  
  
Service Credit Purchases For Approved Absences  
Caused By Serious Illness

**II. PROGRAM:** Legislation

**III. RECOMMENDATION:** Support, if amended

This bill would give a member the option to purchase service credit for an unpaid, approved leave of absence. The bill should be amended to be consistent with the author's intent and to ease administration.

**IV. ANALYSIS:**

AB 2838 allows a member to purchase service credit for an unpaid, approved leave of absence caused by a serious illness, upon his or her return to active service. It is the author's intent that the present value calculation method would be used to determine the member's cost to purchase this service credit.

**Background**

*Leaves of Absence*

A leave of absence is a period of time in which the member had authorization from their employer to be absent from some or all of their duties. To be eligible to purchase service credit for this time, they must have returned to CalPERS-covered employment after the leave of absence. There are several specific types of leaves for which members are allowed to purchase service credit.

### *Maternity/Paternity Leave*

This is a leave of absence for the birth or adoption of a child. A member may be able to purchase service credit for a leave of absence if they are an active or inactive CalPERS member. They cannot purchase service credit for a leave of absence if the leave was not approved by their employer or if they are retired. They also must have returned to CalPERS-covered employment at the end of the approved leave for a period of time at least equal to that leave. A member can purchase up to one full year of service credit per leave. They cannot purchase additional service if they have already earned a full year of during that fiscal year (July 1 - June 30).

### *Educational Leave*

This is a leave of absence for time off to pursue higher education. Members may purchase service credit for a leave of absence if they are an active or inactive CalPERS member. They cannot purchase service credit for a leave of absence if the leave was not approved by their employer, this benefit is not part of their employer's contract with CalPERS, or they are retired. A member must also be a state, University of California, or California State University employee both before and on their return from the leave. They may purchase a maximum of two years' service credit (even if the combined total of their educational leaves exceeds two years).

### *Service Leave*

This is a leave of absence to work with a college or university; a local, state, or federal agency; or certain nonprofit organizations. They may purchase service credit for a leave of absence if they are an active or inactive CalPERS member. A member cannot purchase service credit for a leave of absence if the leave was not approved by their employer, this benefit is not part of their employer's contract with CalPERS, or they are retired. They may purchase a maximum of two years' credit for each service leave. Members must return to CalPERS-covered employment. By law, some service leaves of absence are not eligible for CalPERS service credit, even if the employer gives prior approval.

### *Sabbatical Leave*

This is a partially compensated leave of absence from CalPERS-covered employment. A member may purchase service credit for a leave of absence if they are an active or inactive CalPERS member. They cannot purchase service credit for a leave of absence if the leave was not approved by their employer, if this benefit is not part of their employer's contract with CalPERS, or if they are retired. There is no maximum time they may purchase. Members must return to CalPERS-covered employment

### *Temporary Disability Leave*

This is a leave of absence for time off while receiving temporary disability payments because of a job-related injury or illness. A member may purchase service credit for a leave of absence if they are an active or inactive CalPERS member. They cannot purchase service credit for a leave of absence if the leave was not approved by their employer, this benefit is not part of their employer's contract with CalPERS or they are retired. Members must either return to active CalPERS membership or retire. There is no limit to the amount of time they may purchase. The cost is based on their pay rate and contribution rate as of the return from the leave or the day prior to their leave if they immediately retire. CalPERS interest is calculated from this date through the date they make the purchase, or the day prior to their retirement.

### *Present Value Cost Calculation Method*

The cost to purchase these service credits is calculated using a present value method, which is based on the highest monthly full-time pay rate and an average of any special compensation (i.e., uniform allowance, holiday pay, longevity pay, etc.) reported to CalPERS by their employer during the last 36 months. This provides us the best estimate of the potential future Final Compensation figure that may be used at retirement for calculating the retirement benefit. CalPERS' Actuarial Valuation System (AVS) projects the retirement benefit increase one may receive from this additional service credit (at retirement, disability, death, or other termination from employment), and the potential benefit stream is then converted to a lump sum cost in today's dollars.

Determining the increase to a member's future benefits involves a number of actuarial assumptions, including projected age at retirement, life expectancy, and the probability that some members may never receive service retirement benefits but instead become disabled, die, or terminate their CalPERS membership. These probabilities are the same assumptions used to ensure all benefits are adequately funded.

The actuarial tables used in this process are updated as needed due to changes to existing benefits, new benefits mandated by law, changes in retirement assumptions to reflect our current best estimate of retirement patterns, or other actuarial factors. If a member elects to purchase these service credits, he should be aware that an election to purchase service credit is irrevocable. Once his election is processed, any future changes to the actuarial assumption factors will not affect the cost of the service credit purchase.

### **Proposed Changes**

Specifically, this bill:

- Would allow a member to purchase service credit for time spent on an uncompensated leave due to a serious illness.

- Would identify the payment structure within current law by which CalPERS will calculate the cost and provide payment options to the member.

### **Legislative History**

- 2003 Chapter 855 (SB 268, Soto) – Revised provisions of the law related to the election and payment requirement for service credit elections and cost calculations including discontinuance of service credit payments if the member becomes disabled or dies under special death circumstances and changes to future installment payments to include an actuarial adjustment to prevent loss of revenues to employers. *CalPERS' position: Co-Sponsor.*
- 2000 Chapter 489 (AB 2840, Committee on Public Employees, Retirement and Social Security) – Provided for uniformity in calculation of the cost of various forms for service retirement that can be purchased by CalPERS members in order to increase retirement service credit to enhance their retirement allowance. Specifically, this legislation provided a costing method for partially compensated leaves which requires the member to offset any employer liability for benefits from the credit election. *CalPERS' position: Sponsor.*
- 1989 Chapter 891 (SB 1633, C. Green) – Amended sections of the Government Code which prescribe costs for those members who elect to redeposit withdrawn contributions or contribute for public service credit or leaves of absence. *CalPERS' position: Support.*
- 1969 Chapter 1226 (AB 257, Barnes) – Revised provisions of the law for service credit in addition to that received for prior service and service for various types of absences from covered employment and for employment with employers not participating in the system. Made contribution and interest requirements for the crediting of the service uniform and deleted inoperative additional service credit provisions and preserved credit granted for service under those provisions. *CalPERS' Position: Sponsor.*
- 1968 Chapter 467 (SB 599, Deukmejian) – Permitted crediting of full-time service for absences where partial compensation is received and part-time service credit was previously received. The Board opposed this legislation because the bill increased the benefit costs for the state and other employers under the system. *CalPERS' Position: Oppose.*

### **Issues**

#### **1. Arguments by Those in Support**

According to the author, he introduced this bill to aid a constituent who is a CalPERS member. The constituent was diagnosed with cancer and has had to take two uncompensated leaves of absence under the Family Medical Leave Act in the past two years. Under current law, she is unable to

purchase service credit in the retirement system to cover the time she was on leave.

2. Arguments by Those in Opposition

There is no known opposition at this time.

3. Ambiguous Language Creates Administrative Difficulties

The bill's language is ambiguous in some areas and completely silent in others. As such, it creates an unnecessary burden for CalPERS staff to interpret and administer. Staff recommends the following amendments to ease administration:

- Clarify that the present value calculation method is to be used to determine the cost of the service credit purchase. The bill points to Article 6 which contains multiple methods.
- Define the term "serious illness" or provide the criterion by which CalPERS can determine eligibility.
- Clarify if the service credit purchase should be retroactive. As written the bill does not appear to help the author's constituent.

4. Different Treatment For Serious Illnesses

If an employee took a leave as a result of a serious illness that was work-related, he or she would have been able to purchase back his or her time. Currently the system creates a two-tiered system of illnesses. Some allow time to be purchased, some do not. This bill would provide a member who takes an employer-approved leave of absence due to a serious illness, the option to purchase back his or her time, whether it is work-related or not.

5. Legislative Policy Standards

CalPERS' Legislative Policy Standards suggest a position of support, if amended for proposals "which provide remedies for inequitable, unfair, or discriminatory benefits." AB 2838 would provide a service credit purchase option to a member who takes an employer-approved leave of absence due to a serious illness. Therefore, staff recommends the Board adopt a support, if amended position on this bill. The amendments would make the bill consistent with the author's stated intent and ease administration.

**V. STRATEGIC PLAN:**

This item is not a specific product of the Annual or Strategic Plans, but is a part of the regular and ongoing workload of the Office of Governmental Affairs.

## **VI. RESULTS/COSTS:**

It is the author's intent that the present value calculation method would be used to determine the member's cost to purchase this service credit.

### **Program Cost**

The cost to purchase these service credits is paid by the member and is based on the present value method, which calculates the increase in employer liability by using the payrate and other assumptions affecting liability on the date of the costing request (see *cost* under **Background** above). Unless these assumptions are exactly realized each year, there will be differences on a year-to-year basis. The year-to-year differences between the actual experience and the assumptions are called actuarial gains and losses and serve to raise or lower the employer's contribution rates from year to year.

### **Administrative Costs**

Administrative costs are unable to be determined at this time. Since the bill, as currently written, leaves many questions unanswered, we are not able to accurately determine whether new forms and processes will be required, or make any estimates as to the approximate volume of applicants. If the author takes the suggested amendments, administrative costs should be minor and absorbable

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Wendy Notsinneh, Chief  
Office of Governmental Affairs

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Gloria Moore Andrews  
Deputy Executive Officer - Operations

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Kathie Vaughn  
Assistant Executive Officer  
Member and Benefit Services Branch